

Suburban Plumbing & Heating Inc. and Journeymen Plumbers Union, Local 98, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Case 7-CA-19490

April 4, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN

Upon a charge filed on June 29, 1981, by the Journeymen Plumbers Union, Local 98, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, herein the Charging Party, and duly served on Suburban Plumbing & Heating, Inc., herein Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint and notice of hearing on August 12, 1981, against Respondent. The complaint alleges that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before administrative law judge were duly served on the parties to this proceeding. Respondent did not file an answer to the complaint.

On February 16, 1982, counsel for the General Counsel filed directly with the Board "Motions To Transfer the Case to the Board and for Default Judgment."¹ Subsequently, on February 22, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Default Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations of the Motion for Default Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit,

deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that unless Respondent filed an answer to the complaint within 10 days of the complaint's service "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Default Judgment, on September 15, 1981, the Regional Attorney for Region 7 mailed Respondent a letter in which he advised Respondent that it had failed to file an answer to the August 12 complaint, gave Respondent until September 25, 1981, to file an answer, and notified Respondent that if it did not file an answer by that date a Motion for Default Judgment would be filed. Respondent did not file an answer by September 25, 1981.

On February 16, 1982, counsel for the General Counsel filed with the Board in Washington, D.C., "Motions To Transfer Case to the Board and for Default Judgment." On February 22, 1982, the Board issued an order transferring the proceeding and a Notice To Show Cause by March 8, 1982, why the Board should not grant counsel for the General Counsel's Motion for Default Judgment. Respondent did not reply to the Notice To Show Cause.

Accordingly, under the rule set forth above, Respondent having shown no good cause for its failure to file an answer, we deem the allegations of the complaint to be admitted and we find them to be true and we grant the Motion for Default Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, Suburban Plumbing & Heating, Inc., is a Michigan corporation, with its principal office and place of business at 21123 Woodfarm Drive in Northville, Michigan. Respondent is, and has been at all times material to this proceeding,

¹ Counsel for the General Counsel has entitled her motion "Motion for Default Judgment." We treat this motion the same way we would treat it if she had entitled it "Motion for Summary Judgment."

engaged in providing plumbing and related services at various jobsites within the State of Michigan. During the year ending December 31, 1980, which period is representative of Respondent's operations during all times material to this proceeding, Respondent purchased and caused to be transported and delivered to its Michigan jobsites pipe, copper tubing, and other goods and materials valued in excess of \$50,000, which goods and materials were transported and delivered to said jobsites in Michigan having been received from other enterprises which had received the said goods and materials directly from points located outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material to this proceeding, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this case.

II. THE LABOR ORGANIZATION INVOLVED

The Charging Party, Journeymen Plumbers Union, Local 98, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, is, and has been at all times material to this proceeding, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The Charging Party is, and has been at all times material to this proceeding, the exclusive representative for purposes of collective bargaining of a unit consisting of the journeymen and apprentice plumbers employed by Respondent at or out of its Northville, Michigan, facility, but excluding all office clerical employees, guards, and supervisors as defined in the Act. The collective-bargaining agreement between the Charging Party and Respondent, effective by its terms from June 1, 1980, to May 31, 1982, provides for Respondent to make certain periodic reports and contributions to various fringe benefits funds established for the benefit of Respondent's unit employees. Respondent has failed and refused to make its report and contribution to the fringe benefits funds for the month of February 1981.

Accordingly, we find that, by the conduct described in the above paragraph, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and make whole its employees by making its contractually required report and contributions to the fringe benefits funds for the month of February 1981.²

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Respondent, Suburban Plumbing & Heating, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Charging Party, Journeymen Plumbers Union, Local 98, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen plumbers and apprentices employed by Suburban Plumbing and Heating, Inc., at or out of its Northville, Michigan facility, but excluding office clerical employees, guards, and supervisors as defined in the Act.

² In her complaint, counsel for the General Counsel requested that the remedy for Respondent's unfair labor practices include interest on the amount of unpaid contributions. Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether Respondent must pay any additional amounts into the fringe benefits funds in order to satisfy our "make-whole" remedy. The additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. *Merryweather Optical Company*, 240 NLRB 1213, 1216, fn. 7 (1979).

4. At all times material to this proceeding, the Charging Party has been the exclusive bargaining representative of the employees in the aforesaid unit within the meaning of Section 9(a) of the Act.

5. By refusing and failing to make its contractually required report and payments to the fringe benefits funds for the month of February 1981, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Suburban Plumbing & Heating, Inc., Northville, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to make its contractually required report and payments to the fringe benefits funds for the month of February 1981.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make its contractually required report and payments to the fringe benefits funds for the month of February 1981.

(b) Post at its office in Northville, Michigan, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to make our contractually required report and payments to the fringe benefits funds for the month of February 1981.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL make our contractually required report and payments to the fringe benefits funds for the month of February 1981.

SUBURBAN PLUMBING & HEATING,
INC.